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CITATIONS

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Cases—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 5342

JAMES WINTFORED REWIS AND
MARY LEE WILLIAMS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (A. 51–58) is reported at 418 F. 2d 1218.

JURISDICTION

The judgment of the court of appeals was entered on December 5, 1969. A petition for rehearing was denied on April 7, 1970. Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including June 5, 1970. The petition was filed on June 5, 1970 and was granted on October 12, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was sufficient evidence to show that petitioners caused travel in interstate commerce with intent to promote, carry on, or facilitate their gambling establishment.

STATUTES INVOLVED

18 U.S.C. 2 provides:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. 1952 provides in pertinent part:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

STATEMENT

Petitioners and nine other individuals were indicted in the Middle District of Florida for various offenses in connection with the operation of a lottery (A. 7–32). Counts 6 through 18 charged them with causing travel from Camden County, Georgia to Nassau County, Florida to facilitate an interstate gambling enterprise in violation of 18 U.S.C. 1952.[1] Each count was based on travel on one of thirteen successive Saturdays between May and August 1965. Petitioners were also charged with conspiracy to commit these offenses. Following a jury trial, petitioners were convicted of eight substantive violations and of conspiracy. Petitioner Rewis was sentenced to five years' imprisonment on each count, to run concurrently. Petitioner Williams was sentenced to three years' imprisonment on each count, to run concurrently, sub-

[1] All defendants were Georgia residents except for the petitioners, Rewis and Williams, and Rewis' wife, who were Florida residents.

ject to parole under 18 U.S.C. 4208(a)(2).[2]

The evidence at trial showed that the home of petitioner Williams, which was located in a cluster of six houses in Yulee, Florida, 12 to 13 miles south of the Georgia line, was used in a lottery operation (T. 687–688, 1052).[3] The winning number of this lottery was determined each Saturday at 2:00 p.m., when the results of the National Lottery of Cuba were announced (T. 1773–1774).

Between May 8 and August 14, 1965, FBI agents conducted a surveillance of the Williams home. They found that it was being visited on Saturday mornings by persons driving cars bearing Georgia license plates (T. 815–818, 823–827, 838–846). The surveillance at the house (T. 884–888, 959–970, 1005–1008) and at the state line (T. 904–910, 947–954) revealed that certain of the defendants originally named in the indictment and others typically crossed into Florida, drove to the house, remained inside for a short time (usually about

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[2] Of the other defendants, Rewis' wife received a continuance prior to trial because of health (Docket Entry, September 11, 1965); four defendants (E. Owens, Dawson, Sullivan, and Smith) were acquitted at the end of the government's case (T. 2073); two (T. Owens and Powell) were acquitted by the jury (T. 2621–2622); and the court of appeals reversed the convictions of two (Fuller and Nightengale) who had been found guilty of substantive violations, on the ground that the evidence at trial was insufficient to show that they were more than customers of the gambling enterprise (A. 54). Rewis' convictions on two counts of having failed to purchase a wagering tax stamp were reversed under *Marchetti* v. *United States*, 390 U.S. 39, and *Grosso* v. *United States*, 390 U.S. 62.

[3] "T." refers to the transcript of the trial, a copy of which is on file with the Clerk.

fifteen minutes) and then returned to Georgia before the results of the lottery were announced. On an average, 8 to 9 automobiles came to the residence each Saturday, and generally the same persons visited the premises on a regular basis (T. 825–826, 841–846, 885–888, 961–967, 1020, 1029–1033, 1047–1051, 1083–1089, 1092–1105, 1175–1184, 1203–1211, 1221–1229, 1243–1250, 1324–1329, 1335–1339). At least four of the travelers came from Kingsland, Georgia, just across the state line. The flow of predominantly interstate traffic in and out of the Williams house continued (T. 1019–1023, 1029–1033, 1047–1051, 1055–1060, 1070, 1073–1075, 1083–1089, 1092–1105, 1112–1115, 1175–1187, 1203–1211, 1221–1229, 1243–1251, 1254–1257, 1272–1276, 1281–1298) through the morning of August 14, 1965, when FBI agents raided the residence (T. 1310–1313, 1318–1321, 1323–1329, 1335–1339).

During the surveillance period, petitioner Williams was at home in the house every Saturday, except for the day of the raid, when she was at a funeral (T. 634). Petitioner Rewis and his wife arrived at the Williams residence each Saturday at approximately 11:30 a.m. and departed within one-half hour (T. 845, 887, 952–953, 965–966, 1050, 1087–1088, 1095–1096, 1208–1209, 1225–1226, 1248, 1250, 1328–1329, 1338–1339). Some of the travelers were present at the house at the same time as Rewis (see e.g. T. 965–966, 1050, 1087, 1208, 1224–1226, 1248–1249, 1327–1328). After Rewis departed, he made a telephone call from a highway booth (T. 952–954, 1087–1089, 1250, 1258–1259, 1276–1277, 1285–1286, 1313–1317, 1329), and during

the conversation he referred to a clipboard containing sheets of paper (T. 1258, 1313–1316).

Numerous items of gambling paraphernalia (T. 1401–1407, 1412, 1414–1417, 1419–1421, 1422–1426, 1428–1429, 1431–1437, 1441–1461, 1538–1546, 1551–1556) seized under warrants during the August 14 raid of the Williams house were introduced into evidence (T. 1736–1738). As the agents entered the residence, Rewis attempted to dispose of a "recap sheet" (T. 1419–1420, 1580–1583, 1788–1789). The "recap sheet" (Exh. 41C) showed that the enterprise employed at least three different groups of sellers, totaling of at least twenty individuals, in addition to runners or pick-up men whose function it was to deliver the bet slips from each group of writers to the numbers bank (T. 1799, 1808–1809). The agents found $1,553.61 in cash and various slips of paper containing figures and amounts on Rewis' person (T. 1564–1572). They also found that his automobile contained $104.00 in cash, a clipboard with papers on which numbers were recorded, and approximately 372 lottery tickets arranged in packets (T. 1603–1611).

An expert testified that a lottery of this type generally sold numbers on Saturday, the same day that the winner was drawn. He said it usually required a seller who sold numbers and a "pick-up man" who took lists of numbers sold to a "check-up house," where he turned them over to the operator (T. 1772–1781).

Dorothy Mae Evans, an employee of the lottery who worked at the home of petitioner Williams, testified

that she wrote tickets there. She said that she recorded individual bets on a "ticket" pad. There were two carbons of the "ticket," one of which was given to the bettor and the other placed in a cigar box (T. 639–640, 665). She stated that on four or five occasions co-defendant Nightengale visited the house and "left a ball of little paper with rubber around it" in the cigar box (T. 642, 644). She also testified that co-defendant Fuller had left a piece of paper with numbers and different prices on it. She did not know whose bets were on these slips, but she or petitioner Williams entered information from them on a single ticket from the same pad used for individual bets (T. 645–647). Witness Evans recalled that she once had accepted $80 from Fuller along with his sheet. She also recalled that T. Owens, another co-defendant, had presented "2 or 3 little pieces of paper" and that she had obtained $30 from him. (T. 717). She testified she considered Fuller and Owens to be bettors or buyers (T. 684, 690).

Charlotte Williams, one of the individuals who had traveled from Georgia to the lottery establishment, also testified as a government witness. She had known petitioner Williams for "a good while" (T. 737) and had been at or near the Florida residence on at least seven occasions during the surveillance period (T. 886, 907–908, 950, 965, 1022, 1225, 1248, 1297, 1312, 1320, 1327–1328). When this witness was arrested en route to the Williams residence on the day of the raid, she had, in her pocketbook, a lottery ticket with numbers on it and a sheet of numbers (T. 736, 739, 743–745).

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She said that she was traveling to the residence to make a second purchase because she did not know anybody in Georgia from whom to buy numbers (T. 739, 763).

The district court instructed the jury in effect that "buyers" or "players" in a lottery violated the Florida gambling law and that if they traveled interstate, they also violated 18 U.S.C. 1952 (A. 36-39).[4] It further charged that a defendant could be found guilty, as a principal under the aiding and abetting statute, 18 U.S.C. 2, without proof that he "personally did every act constituting the offense charged" (A. 38).

The court of appeals held that 18 U.S.C. 1952 did not make it a federal crime for a person to cross a state line for the purpose of merely placing a bet. Consequently, it did not address itself to the question whether the Florida statute is violated by a bettor, as distinguished from a person acting in a proprietary manner. The court held there was insufficient evidence that defendants Fuller and Nightengale were more than mere bettors at the Williams establishment and, accordingly, reversed their convictions (A. 54).

The court pointed out, however, that petitioners Rewis and Williams "were the actual proprietors of a numbers game which was frequented by patrons who crossed the Georgia state line to reach their place." (A. 55). It upheld their convictions, stating:

[4] The assistant United States Attorney in his closing statement argued "that it makes no difference whether you are coming across the state line to purchase or whether you're coming across to turn in business as a writer * * *. Anyone who travels in interstate commerce to carry on that type activity is covered under the statute (T. 2367-2368).

> **The one point of significance in this appeal is the question whether the attraction by Rewis and Williams of interstate gamblers to their place near the state boundary comes within the definition of the crime described in Section 1952. The question is not entirely free from doubt, but is solely a matter of construction of the statute. We conclude that the conduct of these appellants caused the interstate travel by those who placed bets with them, and thus came within the prohibition of the statute. [A. 57.]**

ARGUMENT

INTRODUCTION AND SUMMARY

The issue in this case is the sufficiency of the evidence to support petitioners' conviction under the Travel Act, 18 U.S.C. 1952, for conspiracy to cause interstate travel and for causing interstate travel to further an illegal activity, a gambling enterprise in violation of the laws of Florida. There is no dispute that petitioners operated an illegal lottery in Florida and that various persons regularly came from Georgia to the place of that operation in Florida. The question is whether petitioners caused that travel. While the evidence suggests that at least some of those regular visitors were "runners," the case was tried on the theory that it made no difference whether the travelers were runners or players.

Petitioners argue that the Travel Act does not apply in circumstances where the only interstate movement is by customers of an illegal operation.

Depending on the circumstances, however, we urge that the Act may be violated when the interstate element of the violation is supplied by the customer of an illicit commodity or service. If the operators of an illegal establishment merely locate their business near a highway where interstate travelers may happen to drop in, they do not, without more, cause the travel and we agree that the Travel Act is not violated. But if the operator of an illegal establishment actively seeks to attract business from out-of-state or can reasonably foresee that the customers will cross state lines for the specific purpose of patronizing his illegal establishment, we contend he has caused interstate travel and consequently is liable under the Act. By that test, the evidence in this case is sufficient. Although there is no direct proof of petitioners' active solicitation of travel from Georgia, the location of their enterprise, the regularity of the out-of-state visits and other circumstances justify the inference that the travelers from Georgia, whether runners or players, came to the establishment by pre-arrangement with petitioners.

I. THE TRAVEL ACT IS VIOLATED BY A PERSON WHO, IN ORDER TO FACILITATE OPERATION OF HIS ILLEGAL ENTERPRISE, CAUSES INTERSTATE TRAVEL BY OTHERS.

1. The Travel Act makes it a crime for any person to travel in interstate commerce or use any facility in interstate commerce with intent to promote, carry on, or facilitate the carrying on of certain enumerated business enterprises and other activities in violation of state law. The enterprises are those which involve gam-

bling, liquor on which federal excise taxes have not been paid, narcotics or prostitution. The statute also embraces extortion, bribery and arson. It is, of course, not necessary for an individual personally to travel or use interstate facilities to violate the statute. Under the general aiding and abetting statute, 18 U.S.C. 2, a person commits a federal offense if he causes others to do so as a means of furthering his illegal activity. See *Pereira* v. *United States,* 202 F. 2d 830, 836–837 (C.A. 5), affirmed, 347 U.S. 1; *United States* v. *Leggett,* 269 F. 2d 35, 37 (C.A. 7).

The aiding and abetting statute imposes liability for a range of acts by which an individual assists or brings about commission of an offense or certain elements of an offense by another. The classic example is the relation of principal and agent or employer and employee, in which both parties are criminally liable. Thus, in *United States* v. *Chambers,* 382 F. 2d 910 (C.A. 6), taxicab operators who brought customers across a state line to a house of prostitution supplied the element of interstate travel which rendered them, as well as the operator of the house, guilty of violation of the Travel Act. And it is established that the Act is violated when an operator of a gambling house in one state employs persons residing in another who travel from their homes to the gambling establishment; by furnishing employment, the operator causes interstate movement of the employees to the gambling house in aid of the enterprise. See, *e.g., Bass* v. *United States,* 324 F. 2d 168, 171–172 (C.A. 8); *United States* v. *Zizzo,* 338 F. 2d

577, 580 (C.A. 7), certiorari denied, 381 U.S. 915; *United States* v. *Barrow*, 363 F. 2d 62, 64–65 (C.A. 3), certiorari denied, 385 U.S. 1001.

The aiding and abetting statute also applies where the person who performs an essential element of an offense is not himself guilty of the crime with which the person who caused him to act is charged. Indeed subsection (b) of the statute, *supra*, p. 2, which makes liable a person who "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States," was added in 1948 to make it clear that the coverage of the statute extends to such a situation. The Reviser's Note to Section 2 specifically confirmed that the new subsection "removes all doubt that one who puts in motion or assists in the illegal enterprise but causes the commission of an indispensable element of the offense by an innocent agent or instrumentality, is guilty as a principal even though he intentionally refrained from the direct act constituting the completed offense." See *United States* v. *Inciso*, 292 F. 2d 374, 378 (C.A. 7), certiorari denied, 368 U.S. 920; *Pereira* v. *United States*, *supra*, 202 F. 2d at 837.

A person, then, who is involved in illegal activity may cause another to use an interstate facility or to travel interstate, and thereby trigger federal jurisdiction, even though the other person is an innocent agent. See *United States* v. *Kenofskey*, 243 U.S. 440; *Hagner* v. *United States*, 285 U.S. 427; *United States* v. *Gooding*, *12 Wheat*, 460, 469. Indeed, the person may even be the victim of the illegality. For example,

it has long been held that use of the mails by a mail fraud victim in connection with the fraudulent scheme supplies the essential element of a violation of the mail fraud statute, 18 U.S.C. 1341. See, *e.g., Anderson* v. *United States,* 369 F. 2d 11, 15 (C.A. 8), certiorari denied, 386 U.S. 976; *United States* v. *Sorce,* 308 F. 2d 299, 300–301 (C.A. 4), certiorari denied, 377 U.S. 957. Similarly, it seems obvious that a person engaged in extortion will not escape liability under the Travel Act if, rather than traveling across a state line to collect from his victim himself, he forces or induces the victim to come to him to pay. Subsection (b) would apply to the extortionist since he caused interstate travel which furthered his scheme.

The same principle applies equally when the person who supplies the essential element of a federal violation is a knowing and willing participant though not himself guilty of the offense. A procurer of prostitutes who travel across state lines at his request is guilty of violation of the Mann Act, even though they are not themselves guilty of a violation. *Harms* v. *United States,* 272 F. 2d 478 (C.A. 4); *Bell* v. *United States,* 251 F. 2d 490, 492 (C.A. 8). In *United States* v. *Kelley,* 395 F. 2d 727 (C.A. 2), certiorari denied, 393 U.S. 963, there was an arrangement whereby bettors from other states called a telephone number in New York to make known their desire to place a bet. This use of an interstate facility by gambling customers was held to be a sufficient basis for conviction of the operator of the illegal enterprise under the Travel Act. The court explained:

> A person may be held responsible as a principal under 18 U.S.C. § 2(b) for causing another to do an act which would not have been criminal if directly performed by that other person. *United States* v. *Lester*, 363 F. 2d 68, 72–73 (6th Cir. 1966), cert. denied, 385 U.S. 1002. * * * The evidence showed that appellant told these bettors how to get in touch with him if they wished to make a bet and, therefore it was reasonable to expect that they would make interstate calls.* * * *United States Scandifia*, 390 F. 2d 244 (2d Cir. 1968); *Bass* v. *United States*, 324 F. 2d 168 (8th Cir. 1963). [395 F. 2d at 729.]

The facts here are analogous to those in *Kelley*.[5] The evidence clearly suggests, as we show below, that the trips from Georgia to the gambling establishment in Florida were not made by chance, but for the specific purpose of participating in the lottery, and that the operators of the lottery were well aware of this and encouraged it. In these circumstances, as in *Kelley*, it can be said with assurance that petitioners caused interstate travel.

2. In the somewhat analogous context of the mail fraud statute, 18 U.S.C. 1341, this Court has defined the verb "cause" broadly as meaning "bring about," *United States* v. *Kenofskey*, 243 U.S. 440, 443, and has further considered it in terms of reasonable foreseeability, *Pereira* v. *United States*, 347 U.S. 1,

[5] In *United States* v. *Chambers*, *supra*, customers of the house of prostitution were given fictitious calling cards after their first trip so that they subsequently could visit the establishment without arranging to be transported there by one of the taxicab drivers, 382 F. 2d at 914, n. 1.

8–9; see also *United States* v. *Scandifia,* 390 F. 2d 244 (C.A. 2), vacated on other grounds, 394 U.S. 310. While these concepts require refinement in the present context of consensual activity by the persons providing the interstate link, they provide a sound basis for a test of causation to be applied here.

A literal test of reasonable foreseeability might well result, as petitioners argue (Pet. Br. 10–12) in extension of the statute beyond its intended scope. A man, for example, who establishes a restaurant, at which he also provides gambling, on the main road between New York and Florida should reasonably expect that interstate travelers will stop there and gamble. But application of the Travel Act to him on the basis of his customers' travel would not seem appropriate, for it can hardly be said that he causes them to make their interstate journeys. But it is another matter when it is reasonably foreseeable that customers will undertake interstate travel for the specific purpose of patronizing the illegal enterprise. That, without more, should be enough to permit a finding that the operator has "caused" the interstate travel.

A literal "bringing about" test is considerably more stringent than a simple foreseeability test. Where genuinely consensual activity is involved, the operator of an illegal enterprise cannot, alone, bring about interstate travel or use of an interstate facility by his customers, as he more directly does when the interstate element is provided by an unwilling victim, an unwitting agent, or an employee. In a case such as this, the most an operator can do is attempt to attract

business from out-of-state by making the availability of the illegal activity known. It is his customers who decide "when, whether, where, how, how often, and how much they * * * bet" (Pet. Br. 9). But, on the other hand, they would be less likely to travel without the operator's active encouragement. The "bringing about" of interstate travel is thus truly joint. In this context it is appropriate to say that an operator "brings about" interstate travel when he successfully attracts customers who come from out-of-state for the specific purpose of patronizing his illegal enterprise.

The standard of causation appropriate when activity is consensual is thus whether the operator actively attracts individuals across state lines to participate in the illegal activity or can reasonably foresee that they will engage in interstate travel for that specific purpose. As we shall show, this test is fully consistent with the Congressional purpose in passing the Travel Act, and it was properly applied to petitioners in the courts below.

3. Petitioners do not and could not seriously contend that Congress is without power under the commerce clause to punish persons involved in an illegal activity who attract customers across state lines. Their sole contention is that Congress did not intend to accomplish such a result by passage of the Travel Act. However, the legislative history of the statute plainly supports the sensible interpretation that the Act, through the operation of 18 U.S.C. 2, applies to the operator of an illegal enterprise who causes another to engage in interstate travel or use an interstate

facility whether he is an employee, agent, victim or customer.

The Act is a comprehensive measure "primarily designed to stem the 'clandestine flow of profits' and to be of 'material assistance to the States in combating pernicious undertakings which cross State lines'." *United States* v. *Nardello,* 393 U.S. 286, 292. The House report makes clear a purpose to "assist local law enforcement by denying interstate facilities to individuals engaged in illegal gambling, liquor, narcotics or prostitution business enterprises." H. Rep. No. 966, 87th Cong., 1st Sess., p. 3. It is true, as petitioners point out (Pet. Br. 12–16), that the primary concern of the draftsmen was with organized crime and "the racketeer who conducts an unlawful business but lives far from the scene in comfort and safety, as well as against other hoodlums." S. Rep. No. 644, 87th Cong., 1st Sess., p. 3. But Congress manifestly did not intend to limit the application of the statute to "organized crime", a term petitioners themselves assert is "elusive" and difficult to define (Pet. Br. 16). Cf. *United States* v. *Fabrizio,* 385 U.S. 263. It is interstate travel or use of interstate facilities alone which triggers the Act, and there is nothing in it that requires proof of any particular volume of illegal business or connection with other illegal activities.

There is similarly no support for the proposition that Congress intended to differentiate the Travel Act from other criminal statutes by making 18 U.S.C. 2 inapplicable to it. To the contrary, both the Senate and House Reports quoted the following passage from

a letter of the Attorney General: "The bill would also have the effect, through its interaction with section 2 of Title 18, United States Code, of prescribing penalties for persons who send others on similar missions [across State lines]." S. Rep. No. 644, 87th Cong., 1st Sess., p. 4; H. Rep. No. 966, 87th Cong., 1st Sess., p. 4.

Finally, the history of the bill—and specifically the exchange of letters between the Attorney General and certain Congressmen regarding its scope, upon which petitioners rely—tends to support the interpretation that attraction of customers across state lines for the purpose of illegal activity is sufficient, under the principles of 18 U.S.C. 2, to supply the interstate element of a Travel Act offense. Among the concerns of the Congressmen was whether the Act would apply to a business enterprise which provides legitimate activity, such as dining or entertainment, in addition to illegal gambling, and which advertises only its legitimate activities across state lines. The Attorney General replied:

> * * * [I]t is my opinion that making arrangements for entertainment in business establishments such as supper clubs, hotels, or motels which businesses are legitimate in the community or the advertising of those legitimate businesses * * * through the medium of interstate commerce would not come within the intended prohibitions of the section.[6]

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[6] The Attorney General's letter, 107 Cong. Rec. 16542, in full, is set forth in the Appendix to this brief.

By implication, advertising or promoting illegal activities across state lines or arranging for customers to travel across state lines to patronize illegal establishments would be covered by the Act. Since such advertising or arrangements regarding illegal activities would inevitably be clandestine, however, it is difficult to prove them directly, and often necessary to infer that they have taken place from circumstances such as those in this case.

II. THE EVIDENCE WAS SUFFICIENT TO SHOW THAT PETITIONERS CAUSED INTERSTATE TRAVEL BY CUSTOMERS OF THEIR ILLEGAL LOTTERY.

The evidence in this case amply supports the inference that petitioners sought to attract Georgia customers to come to their Florida lottery. The gambling enterprise was conducted from a private house in a small hamlet near the Georgia-Florida border. It is most unlikely that one would chance upon this remote location. Rather, it seems certain that customers—if indeed they were not runners—came across the state line as a result of solicitation, direct or indirect, by petitioners.

Other evidence confirms the conclusion that the game was pre-arranged among the operators and players. A small number of persons, usually the same eight or nine, came to the house at approximately the same time on Saturday mornings. A number of these regulars came from Georgia. One testified that she bought a lottery ticket at the house because she did not know of lotteries in Georgia. The visitors arrived at an appropriate time to purchase numbers

from the lottery operator prior to the drawing. Most remained a short time on the premises and then returned to Georgia.

These facts, in our view, justify the inference that petitioners actively sought customers from Georgia, and elsewhere, probably in the word-of-mouth manner in which virtually any such enterprise becomes known to interested persons. But the evidence at a minimum sufficiently supports the inference that petitioners knew their establishment was attracting a regular out-of-state clientele who travelled interstate for the specific purpose of participating in the lottery. Either interpretation of the facts satisfies the standard of causation developed in the preceding section.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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JANUARY 1971.

APPENDIX

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., August 21, 1961.

Hon. OREN HARRIS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: This is in response to your letter of August 18, 1961, requesting my views as to the scope of S. 1653 a bill "to prohibit travel or transportation in commerce in aid of racketeering enterprises."

Before answering your specific questions it may be helpful to discuss the use of the words "any business enterprise" in subsection (b) of S. 1653 insofar as the intention of the drafter was concerned. During the formulation of the proposal we were aware that to prohibit travel in furtherance of any unlawful activity would be a very broad and vague proscription which might not reach the type of activity in which we were interested. The term "unlawful activity" was therefore defined to limit its application to those crimes which historically have been the forte of organized crime. Those crimes include gambling, liquor, narcotics, and prostitution offenses and extortion or bribery. However, since casual gambling, such as poker game in a private home, might violate the gambling statutes of some States a further restriction upon the operation of the statute was considered to be necessary.

The type of offenses which pose such a great threat to this country due to the involvement of organized crime are those offenses which are committed regularly and as a continuous course of conduct. The term "business enterprise involving" those offenses was used in the definition of "unlawful activity" to connote a continuous course of conduct in gambling, etc. It was not the intent to include within the reach of the statute legitimate business enterprises which may touch upon offenses such as gambling.

Thus, a legitimate pharmaceutical manufacturer would not be included within the reach of the statute if one of his employees is involved in a narcotic offense. The employee may himself violate the statute by engaging in a continued course of conduct in violation of the narcotics statutes but the legitimate business would not be affected by this bill.

An example of the type of activity which we consider to be within the purview of the statute would be travel to promote a continuous course of conduct involving gambling. Thus a gambling house would be within the definition of unlawful activity in the bill and any travel on the part of any person with the intent to establish a gambling house and a further act subsequent to the travel to promote that activity would be a violation of the section. Travel, to promote a legitimate business which may thrive because a gambling house is in the area, would not, in my opinion, violate the section. In summary it was intended to prohibit the travel to promote the gambling house, directly, and not to prohibit the travel to promote a hotel or supper club or any other legitimate business.

In view of the foregoing, it is my opinion that making arrangements for entertainment in business establishments such as supper clubs, hotels, or motels which businesses are legitimate in the community or the advertising of those legitimate businesses or the purchasing of food or beverages or the collection of checks by legitimate banking houses through the medium of interstate commerce would not come within the intended prohibitions of the section.

I thank you for your interest and cooperation in this matter and hope that the foregoing satisfactorily answers your inquiry.

Sincerely,

ROBERT F. KENNEDY,
Attorney General.

U. S. GOVERNMENT PRINTING OFFICE: 1971